

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VADIM BABYREV,

Petitioner,

No. 19 CV 11693-LTS

-against-

BRIAN BELFI et al.,

Respondents.

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ORDER

This matter, brought pursuant to 28 U.S.C. section 2254, was initiated by Petitioner filing his petition pro se. (Docket Entry No. 1.) The Court appointed counsel to represent Petitioner, (Docket Entry No. 8), and Petitioner, again pro se, filed a “Supplemental Pleading” requesting that the Court supplement his petition to include a claim that the Kirby Forensic Psychiatric Facility’s response to COVID-19 violates his right to Due Process protected by the Fifth and Fourteenth Amendments. (Docket Entry No. 20.) By order dated April 21, 2020, the Court directed counsel to review the “Supplemental Pleading” and advise the Court. (Docket Entry No. 21.) In the status report dated May 15, 2020, counsel requests that the Court construe the “Supplemental Pleading” as a petition brought pursuant to 28 U.S.C. section 2241 alleging violations of the Eighth Amendment as well as the Fifth and Fourteenth Amendment claims specifically asserted. (Docket Entry No. 24)

The Second Circuit has held that “a state prisoner may challenge either the imposition or the execution of a sentence under Section 2254.” James v. Walsh, 308 F.2d 162, 167 (2d Cir. 2002); see also Cook v. New York State Division of Parole, 321 F.3d 274, 278 (2d Cir. 2003) (a habeas corpus petition brought under 28 U.S.C. § 2254 is the proper vehicle for a state prisoner who is in custody pursuant to the judgment of a state court and challenges the

constitutionality of his custody). Accordingly, the Court construes Docket Entry Number 20 as a supplemental element of Petitioner's section 2254 petition asserting Fifth, Eighth, and Fourteenth Amendment violations. In light of the urgency of the COVID-19 issues raised, Respondent is directed to file its answer to the claims asserted (and deemed asserted) in Docket Entry Number 20 by **May 29, 2020**. Petitioner's counsel must file a response on Petitioner's behalf by **June 5, 2020**. Respondent's deadline to answer Docket Entry No. 1 remains June 8, 2020. (See Docket Entry No. 23).

SO ORDERED.

Dated: New York, New York  
May 19, 2020

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge